IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15837 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHBHAI LAXMANBHAI KALARIA

Versus

YASVANATRAY BABULAL MEVADA

Appearance:

1. Special Civil Application No. 15837 of 2004

MR CL SONI for Petitioner No. 1-2

MR HM LATHIA for Respondent No. 1-2

MR PARAS H LATHIA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 04/05/2005

ORAL JUDGEMENT

1. This petition is directed against the order dated 23/11/2004 passed below Exh. 9 by the learned Civil Judge (S.D.), Dhoraji in Special Civil Suit No. 33 of

2003, whereby the said application was partly allowed and the prayer with regard to right to file written statement was not granted.

2. In view of the recent Supreme Court decision in the case of Kailash v. Nanhku & Ors., reported in 2005 (3) Scale p. 740, it has been held as under :-

"Considering the object and purpose behind enacting Rule 1 of Order VIII in the present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the court may extent the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact the entire life and vigour of the provision. The delaying tactics adopted by the defendants in law courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because the substantial part, if not in its entirety, the term for which he was elected even though he may loose the battle at the end. Therefore, the Judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence.

Ordinarily the time schedule prescribed by Order VIII Rule 1, has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for asking more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time prescribed by Order VIII Rule 1 of the Code was being allowed to be made because the circumstances were

exceptional occasioned by reasons beyond the control of defendant and such extension was required in the interest of justice, and gave injustice would be occasioned if the time was not extended.

A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well settled parameters, the Courts may indeed put the defendants on terms including imposition of compensatory costs and may also insist on affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the Court that the prayer was founded on grounds which do exist.

The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, the defendant shall be permitted to seek extension of time when the court is satisfied that it is a case of laxity of gross negligence on the part of the defendant of his counsel. The court may impose costs for dual purpose (i) to deter the defendant from seeking any extension of time just for asking and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order VIII Rule 1 shall be the rule and departure therefrom an exception made for satisfactory reasons only. We hold that Order VIII Rule 1 though couched in mandatory form, is directory being a provision in the domain of processual law.

3. In view of ratio laid down by the Apex Court in the aforesaid decision, I am of the opinion that the trial court is required to reconsider the application at Exh.9.

4. In above view of the matter, the petition is allowed. The order dated 23/11/2004 passed below Exh. 9 by the learned Civil Judge (S.D.), Dhoraji in Special Civil Suit No. 33 of 2003 is quashed and set aside. The trial Court is directed to reconsider exh.9 application

in view of the aforesaid decision. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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